

ENTERED

July 20, 2022

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION

JOHN RAY BENAVIDES

Petitioner

VS.

UNITED STATES OF AMERICA

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CIVIL ACTION NO. 1:22-CV-00009

CRIMINAL ACTION NO. 2:15-CR-01090-1

ORDER

On January 25, 2022, Petitioner John Ray Benavides moved to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255. (Doc. 1) He alleges that: (1) his defense counsel provided ineffective assistance; (2) the Court's sentence constitutes plain error; and (3) the Court violated his rights to due process by failing to order a presentence investigation report. (*Id.* at 4–8) The United States of America moved to dismiss on the grounds that Benavides's Motion is “untimely, contrary to the record, and lacks factual or legal grounds to support the requested relief.” (Motion to Dismiss, Doc. 23, 1)

The Magistrate Judge recommends that Benavides's Motion be denied as it is untimely filed and substantively meritless. (R&R, Doc. 24) No party filed objections to the Report and Recommendation, and the Court finds no plain error within it. *See* 28 U.S.C. § 636(b)(1); FED. R. CIV. P. 72(b)(3).

As a result, the Court **ADOPTS** the Report and Recommendation (Doc. 24). It is:

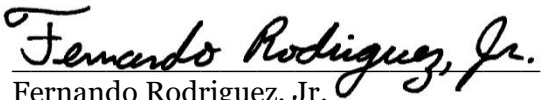
ORDERED that the Government's Motion to Dismiss (Doc. 23) is **GRANTED**; and

ORDERED that all claims against the United States by Petitioner John Ray Benavides in his Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody (Doc. 1) are **DISMISSED WITH PREJUDICE**.

In addition, the Court finds that no outstanding issue would be debatable among jurists of reason, and that Benavides fails to make a “substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). Accordingly, the Court **DENIES** a Certificate of Appealability.

The Clerk of Court is directed to close this matter.

Signed on July 20, 2022.


Fernando Rodriguez, Jr.
United States District Judge